IN THE

Supreme Court of the United States

October Term, 1979

No. 79-658

DEERING MILLIKEN RESEARCH CORPORATION and MOULINAGE ET RETORDERIE DE CHAVANOZ,

Petitioners,

v.

DUPLAN CORPORATION, *et al.*,

Respondents.

REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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Petitioners Deering Milliken Research Corporation and Moulinage et Retorderie de Chavanoz, pursuant to Rule 24(4) of the Rules of this Court, submit this brief in reply to a new contention appearing in Respondents' Brief in Opposition to their petition.

Petitioners' Due Process Argument on the Issue of Antitrust "Facilitation" Was Raised Below and Should Be Considered by This Court.

The courts below ruled that Petitioners had "facilitated" certain antitrust violations which Leesona committed in its patent licensing program. The determination that Leesona's licensing was illegal was not made in this case but in an entirely unrelated action, *In re Yarn Processing Patent Validity Litigation,* 541 F.2d 1127 (5th Cir. 1976), *cert. denied,*

433 U.S. 910 (1977), to which Petitioners were not parties. Nonetheless, the "facilitating" of Leesona's wrong was here held to be a separate ground of Petitioners' antitrust liability.

We contend that this ruling deprived Petitioners of their most basic rights of due process (DMRC Petition at 26-29).

Respondents argue that our due process objection was not made below and so should not be heard by this Court (Brief in Opposition at 32-33). The total answer to this contention is in our oral argument before the Fourth Circuit:

> [Mr. Topkis:] [There is] Something strange in the District Court's decision, an act of facilitation. Judge Dupree held that we, and I quote, "knowingly facilitated the combination between Leesona and other competing manufacturers of false-twist machines pursuant to licensing agreements held unlawful by the Fifth Circuit." And he went on, "by aiding Leesona in the furtherance of conduct thus held violative of the Sherman Act, DMRC and Chavanoz have themselves violated the act." * * * I submit that holding is quite extraordinary. I don't know the full particulars of the Leesona situation. I know the throwsters sued Leesona down in Florida and the case went to the Fifth Circuit a couple of times.
>
> I do know this. We weren't parties to it. We didn't participate in that trial or those appeals, and I submit that it is incredible that we be held to have violated the Sherman Act because of what the Fifth Circuit held in another case, which was not even decided until, I think, our trial was about five or six months old. How can we possibly be held liable for what Leesona did or was held to have done in a trial in which we didn't participate? The most basic ideas of due process forbid that.

> And let me note carefully that Judge Dupree did not himself hold that the Leesona arrangements with other manufacturers were unlawful. He said only the Fifth Circuit held them unlawful. Therefore, it was a Sherman Act violation for Chavanoz and DMRC to have facilitated that.
>
> I'm sorry. I just don't follow that. (United States Court of Appeals, Fourth Circuit, Transcript of Proceedings, February 9, 1979, at 181-82.)

We say here no more and no less than we said in the Fourth Circuit: "The most basic ideas of due process forbid" what was done here.

Dated: December 18, 1979

Respectfully submitted,

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